

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MARCH 1996 SESSION

FILED
May 3, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

JAMES LEE TURNBILL,)
)
Appellant,)
)
v.)
)
STATE OF TENNESSEE,)
)
Appellee.)

No. 03C01-9509-CR-00275
Knox County
Hon. Richard R. Baumgartner, Judge
(Post-Conviction: First Degree Murder)

For the Appellant:

Leslie M. Jeffress
1776 Riverview Tower
900 S. Gay Street
Knoxville, TN 37902

For the Appellee:

Charles W. Burson
Attorney General of Tennessee
and
Eugene J. Honea
Assistant Attorney General of Tennessee
450 James Robertson Parkway
Nashville, TN 37243-0493

Randall E. Nichols
District Attorney General
and
Marsha Selecman
Assistant District Attorney General
City-County Building
Knoxville, TN 37902

OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

Joseph M. Tipton
Judge

OPINION

The petitioner, James Lee Turnbill, appeals as of right from the Knox County Criminal Court's dismissal of his fourth petition for post-conviction relief because it was untimely filed. The petitioner was convicted of first degree murder and sentenced to life imprisonment in the custody of the Department of Correction. His conviction and sentence were affirmed on appeal. State v. Turnbill, 640 S.W.2d 40 (Tenn. Crim. App.), app. denied (Tenn. 1982).

The petitioner contends that the application of the three-year statute of limitations to his petition results in a denial of his right to due process. Burford v. State, 845 S.W.2d 204 (Tenn. 1992). He argues that the sufficiency of the evidence to support his conviction for first degree murder should be reexamined in light of the Tennessee Supreme Court's decision in State v. Brown, 836 S.W.2d 530 (Tenn. 1992). However, we have consistently refused to apply Brown's holdings retroactively.

The record reflects that the petition for post-conviction relief was filed in the trial court on January 4, 1993. T.C.A. § 40-30-102, effective on July 1, 1986, afforded a petitioner three years from the date of the final action of the highest state appellate court in which to file a post-conviction petition. In cases where the final action occurred prior to the effective date of T.C.A. § 40-30-102, the petitioner had three years from the effective date of the statute of limitations in which to file any post-conviction petition. The petitioner failed to file his petition within three years of that date and presents no just cause for the tolling of the statute of limitations.

After a full consideration of the record, the briefs, and the law governing the issue presented, we are of the opinion that the record sufficiently shows that the petition for post-conviction relief was filed untimely, that no error of law exists that would

require a reversal, and that no precedential value would be derived from the rendering of an opinion. Therefore, we conclude that the judgment of the trial court should be affirmed pursuant to Rule 20, Tenn. Ct. Crim. App. R.

Joseph M. Tipton, Judge

CONCUR:

Paul G. Summers, Judge

Charles Lee, Special Judge